BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

HOWARD HASTINGS,	:	
Claimant,	:	File No. 5063710
vs.	:	
ORKIN PEST CONTROL,	:	ARBITRATION DECISION
Employer,	:	
and	:	
NEW HAMPSHIRE INSURANCE,	:	Head Note Nos.: 1803
Insurance Carrier, Defendants.	:	

STATEMENT OF THE CASE

Claimant Howard Hastings seeks workers' compensation benefits from the defendants, employer Orkin Pest Control (Orkin) and insurance carrier New Hampshire Insurance (NHI). The undersigned presided over an arbitration hearing on September 24, 2021, held by internet-based video under order of the Commissioner. Hastings participated personally and through attorney Mark J. Sullivan. The defendants participated by and through attorney Tiernan T. Siems.

ISSUES

Under rule 876 IAC 4.19(3)(*f*), the parties jointly submitted a hearing report defining the claims, defenses, and issues submitted to the presiding deputy commissioner. The hearing report was approved and entered into the record via an order because it is a correct representation of the disputed issues and stipulations in this case. The parties identified the following disputed issues in the hearing report:

1) Is the stipulated work injury the cause of a temporary period during a period of recovery from July 23, 2018, through August 31, 2019?

2) What is the nature and extent of permanent disability, if any, caused by the stipulated work injury?

3) If Hastings is entitled to permanent disability benefits, what is the commencement date?

4) Is Hastings entitled to recover the cost of an independent medical examination (IME) under Iowa Code section 85.39?

5) Is Hastings entitled to a penalty under Iowa Code section 85.60?

6) Is Hastings entitled to reimbursement of the medical expenses in Claimant's Exhibit 12?

7) Is Hastings entitled to reimbursement of the mileage in Claimant's Exhibit 15?

8) Is Hastings entitled to taxation of the costs against the defendants?

STIPULATIONS

In the hearing report, the parties entered into the following stipulations:

1) An employer-employee relationship existed between Hastings and Orkin at the time of the alleged injury.

2) Hastings sustained an injury on August 11, 2016, which arose out of and in the course of his employment with Orkin.

3) If the injury is found to be a cause of permanent disability, the disability is an industrial disability.

4) At the time of the stipulated injury:

    a) Hastings's gross earnings were seven hundred fifty-six and 91/100 dollars ($756.91) per week.

    b) Hastings was married.

    c) Hastings was entitled to three exemptions.

5) Prior to hearing, the defendants paid to Hastings 101.571 weeks of compensation at the rate of five hundred four and 99/100 dollars ($504.99) per week.

The parties' stipulations in the hearing report are accepted and incorporated into this arbitration decision. The parties are bound by their stipulations. This decision contains no discussion of any factual or legal issues relative to the parties' stipulations except as necessary for clarity with respect to disputed factual and legal issues.

FINDINGS OF FACTS

The evidentiary record in this case consists of the following:

- Joint Exhibits (Jt. Ex.) 1 through 7;

- Claimant's Exhibits (Cl. Ex.) 1 through 15;
- Defendants' Exhibits (Def. Ex.) B and C through J; and
- Hearing testimony by Hastings and his wife, Michelle Hastings.

After careful consideration of the evidence and the parties' post-hearing briefs, the undersigned enters the following findings of fact.

Hastings was fifty years of age at the time of hearing. (Hrg. Tr. p. 67) He is right-hand dominant. (Def. Ex. F, p. 3, Depo. Tr. p. 9) The weight of the evidence establishes Hastings was born with an abnormality in his right shoulder, but he experienced no issues relating to this condition prior to August 11, 2016.

Growing up, Hastings worked on his family's farm. (Hrg. Tr. p. 69) He was a good student in high school, from which he graduated in 1991. (Hrg. Tr. pp. 67–68) During high school, he worked at a general store and doing summertime maintenance at the local college, which included mowing grass and janitorial work. (Hrg. Tr. p. 70)

After high school, Hastings served in the United States Air Force. (Hrg. Tr. p. 68–69) Hastings had his enlistment cut short because the recruiter did not provide the Air Force with all of his medical records, so he received an honorable discharge during his second year. (Hrg. Tr. pp. 68–69) He had not obtained a postsecondary degree or certificate before the hearing in this case. (Hrg. Tr. p. 68)

After Hastings left the Air Force, he returned to the Dubuque area. (Hrg. Tr. p. 70) He worked for a tree service trimming trees around powerlines. (Hrg. Tr. p. 70) This required him to climb trees and powerline poles, sometimes as high as one hundred feet in the air, while carrying chainsaws, to reach the tree branches he needed to trim. (Hrg. Tr. pp. 70–71) Hastings next worked performing construction work such as roofing, siding, remodeling, and pouring concrete. (Hrg. Tr. pp. 71–72)

In 1998, Orkin hired Hastings. (Hrg. Tr. p. 72) Initially, Hastings worked seasonally spraying poison in barns to kill flies and spiders. (Hrg. Tr. p. 72–73) Orkin paid Hastings a commission for each job. (Hrg. Tr. p. 73) He then became an hourly employee who worked year-round for Orkin, doing a combination of sales and service work. (Hrg. Tr. pp. 73–74)

Hastings voluntarily quit his job at Orkin in 2002 because he did not like the occasional layoffs that were part of his employment there. (Hrg. Tr. p. 75) He purchased a restaurant on contract that he operated. (Hrg. Tr. p. 75) The restaurant generated enough revenue to pay for its operations but not enough for Hastings to take a salary. (Hrg. Tr. p. 76) Consequently, Hastings lost money on the venture and returned the restaurant to the people with whom he had contracted to buy it. (Hrg. Tr. p. 76)

Hastings got a job with BFI, a waste management company, driving a truck and collecting the contents of trash and recycling bins in small cities near Dubuque. (Hrg. Tr. pp. 76–77) In November of 2003, BFI discharged Hastings after the truck he was driving crashed into the back of another BFI truck due to a brake issue. (Hrg. Tr. p. 77)

In or around June of 2004, Orkin hired Hastings again. (Hrg. Tr. p. 78) He started out doing farm jobs before moving to residential work. (Hrg. Tr. p. 78) Hastings worked in sales at Orkin from 2010 to 2015. (Hrg. Tr. pp. 79–80) He then transitioned back to doing a combination of sales and service work. (Hrg. Tr. p. 80)

In March of 2015, Hastings fell while working a job for Orkin and injured his right wrist. (Hrg. Tr. p. 89) He ultimately underwent a computed tomography (CT) scan of his injured arm, which showed a congenitally deformed right shoulder. (Hrg. Tr. p. 90–91) However, Hastings did not learn of this finding at the time. (Hrg. Tr. pp. 91, 102)

On August 11, 2016, Orkin dispatched Hastings to treat a two-story home infested with bed bugs in Darlington, Wisconsin. (Hrg. Tr. p. 81) Typically, Orkin assigned two employees for a job of this size. (Hrg. Tr. p. 87) However, it sent only Hastings to perform this one. (Hrg. Tr. p. 87)

A heat treatment consists of multiple steps. First, Hastings dusted the wall voids with a poisonous dust to kill any bed bugs that might have gotten into them. (Hrg. Tr. p. 83–84) He then set up for the heating process, which involves stapling heat blankets on the windows and moving furniture. (Hrg. Tr. p. 84) Next, Hastings set up the heat-treat unit, which weighs about two hundred pounds, burns propane to create heat, and has a fan that blows the heat into the house. (Hrg. Tr. pp. 85–86) He also set up four fans, each weighing between fifty and seventy pounds, throughout the house to ensure the heat was properly distributed to kill the bed bugs. (Hrg. Tr. pp. 86, 106)

Hastings set the heat-treat unit to raise the temperature in the home to one hundred fifty-eight degrees because the furniture in the house must reach one hundred twenty-eight degrees to kill the bed bugs. (Hrg. Tr. p. 86) He used a probe to measure the temperature of furniture and would move items as needed to ensure they reached the proper killing temperature. (Hrg. Tr. p. 86) It took Hastings five or six hours to complete the heat treatment. (Hrg. Tr. p. 87)

After Hastings finished the heat treatment, he removed the equipment from the home. (Hrg. Tr. p. 97) When Hastings went to pick up a fan on the second floor of the home, he felt a pinch in the back of his right arm, around the area of his triceps muscle. (Hrg. Tr. p. 97) His arm then felt heavy with pain in the area of his biceps after the pinch sensation. (Hrg. Tr. pp. 97, 105–06) Hastings also began to feel nauseous. (Hrg. Tr. p. 98)

Hastings telephoned his supervisor at Orkin and left a message. (Hrg. Tr. p. 98) He finished loading the trailer before his boss returned his call. (Hrg. Tr. p. 98) His boss asked if he had been drinking water, which he had, and then instructed him to drive back to the office with the vehicle's air conditioning on high. (Hrg. Tr. p. 98)

Hastings followed his boss's instructions. (Hrg. Tr. p. 98) He did not notice that his right arm swelled up during the drive. (Hrg. Tr. p. 99) When Hastings arrived at the office, his boss looked him over, told him he had "a Popeye arm," and directed him to go home to ice his arm. (Hrg. Tr. p. 99) Hastings's arm had also turned red in the biceps area. (Hrg. Tr. p. 99) He went home and iced his injured arm. (Hrg. Tr. p. 99)

Hastings returned to work the next day and began performing paperwork. (Hrg. Tr. p. 99) The redness of Hastings's right arm had turned to purple. (Hrg. Tr. p. 100; Jt. Ex. 1, p. 1) He felt pain throughout his right arm and in his right shoulder. (Hrg. Tr. p. 102) Hastings was having a hard time lifting his right arm higher than his chest due to swelling. (Hrg. Tr. p. 101; Jt. Ex. 1, p. 1) His boss observed that his right arm was more swollen than it had been the day before, so he called Orkin risk management. (Hrg. Tr. pp. 99–100) His boss then drove him to Tri-State Occupational Health to obtain care for his injured right arm. (Hrg. Tr. pp. 100–01)

Erin Kennedy, M.D., examined Hastings and noted in pertinent part:

> [A]s exam ensues, he clearly becomes more uncomfortable. There is redness from the shoulder down the arm. It is most impressive over the bicep. There is small bruise over the bicep area. There is swelling throughout the right arm. He has [full range] of motion at right digits, wrists, elbow. He has difficulty lifting right arm over midchest level. He does so passively. Palpation of bicep and tricep are both sore. However, he reports abrupt worsening of throbbing pain and radiating pain after palpation of bicep. There is possible [P]opeye deformity.

(Jt. Ex. 1, p. 1)

Dr. Kennedy assigned Hastings work restrictions and ordered magnetic resonance imaging (MRI). (Jt. Ex. 1, pp. 1–2) The MRI showed a "congenital glenoid abnormality with labral tearing." (Jt. Ex. 1, p. 4) Dr. Kennedy noted the "markedly deformed and abnormal glenoid with posterior dysplasia was best demonstrated on the CAT scan of March 2015." (Jt. Ex. 1, p. 6) Dr. Kennedy opined that, "even if there is a congenital or preexisting structural issue, something has happened to cause swelling, redness, bruising that is very evident even today and the abrupt reduction of function in terms of motion and strength of the shoulder." (Jt. Ex. 1, p. 4)

Dr. Kennedy observed, "There appears to be significant separation of the posterior superior, posterior, and posterior inferior labrum either representing a tear or congenital anomaly." (Jt. Ex. 1, p. 6) She also noted, "The anterior labrum is somewhat difficult to evaluate and is intact inferiorly. There may be a large labral foramen or less likely a partial tear of the anterior labrum." (Jt. Ex. 1, p. 6) Because the "vascular concern" was out of Dr. Kennedy's "realm of expertise," she referred Hastings to James Nepola, M.D., at the University of Iowa Hospitals and Clinics (UIHC). (Jt. Ex. 1, p. 6)

Hastings had an appointment with Dr. Nepola on September 27, 2016. (Jt. Ex. 4, p. 13) Dr. Nepola noted Hastings complained of continued pain in his triceps, cramping in his forearm and upper arm, burning near his axilla in his upper arm, and venous streaking. (Jt. Ex. 4, p. 13) He opined Hastings had a "congenital dysplastic glenoid and hypertrophic labrum" and "traumatic findings on imaging or exam today." (Jt. Ex. 4, p. 14) Dr. Nepola referred Hastings to a vascular specialist. (Jt. Ex. 4, p. 14)

Andrei Odobescu, M.D., examined Hastings on October 25, 2016, to determine if he had a venous malformation. (Jt. Ex. 4, p. 17) He noted the discoloration and swelling in Hastings's arm had subsided and he complained of some cramping in the forearm and upper arm. (Jt. Ex. 4, p. 17) Dr. Odobescu concluded, "The swelling appears to have been posttraumatic which is not in keeping with a venous malformation." (Jt. Ex. 4, p. 18) The MRI and history Hastings relayed reinforced this conclusion. (Jt. Ex. 4, p. 18) Dr. Odobescu concluded Hastings had a "partial occlusion of the right subclavian vein" and referred him to the UIHC vascular surgery department. (Jt. Ex. 4, p. 18)

On October 31, 2016, Rachael Nicholson, M.D., examined Hastings and ordered magnetic resonance venography (MRV) to determine if Hastings had thoracic outlet syndrome and a multiplanar MRI of the brachial plexus. (Jt. Ex. 4, pp. 19–21) The MRV was consistent with thoracic outlet syndrome. (Jt. Ex. 4, p. 23) The MRI did not show an injury to the brachial plexus. (Jt. Ex. 4, p. 24) A subsequent electromyography (EMG) did not show any permanent nerve damage suggestive of cramps in the forearm. (Jt. Ex. 4, p. 25)

Chandan Reddy, M.D., saw Hastings on November 29, 2016. (Jt. Ex. 4, p. 25) He noted Hastings was still having problems moving his arm. (Jt. Ex. 4, p. 25) Dr. Reddy diagnosed Hastings with subclavian vein thrombosis and thoracic outlet syndrome, recommended continuing physical therapy and deferred to Luigi Pascarella, M.D., on the question of surgery. (Jt. Ex. 4, p. 25–26)

Dr. Pascarella examined Hastings on December 1, 2016. (Jt. Ex. 4, p. 29) He noted Hastings complained of ongoing pain and numbness in his arm. (Jt. Ex. 4, p. 29) Dr. Pascarella recommended right thoracic outlet decompression with a brachial plexus neurolysis. (Jt. Ex. 4, p. 29) On December 21, 2016, Drs. Reddy and Pascarella performed a brachial plexus neurolysis, resection of the first rib, and resection of anterior scalene muscles. (Jt. Ex. 4, pp. 37–47) Because the blood clot in Hastings's neck was larger than anticipated, Dr. Pascarella informed him that they were worried about how well they were able to seal the artery after removing the clot. (Hrg. Tr. p. 117) On December 25, 2016, UIHC discharged Hastings. (Jt. Ex. 4, p. 50)

The next day, Hastings experienced shortness of breath, coughing, nausea, and neck issues. (Jt. Ex. 4, p. 50; Hrg. Tr. p. 118) He telephoned the nurse case manager assigned to his workers' compensation claim and she directed him to go to the emergency room (ER). (Jt. Ex. 4, p. 50; Hrg. Tr. p. 118) Hastings did as instructed and went to the Finely Hospital ER in Dubuque, where the doctors arranged for transportation by ambulance to UIHC in Iowa City. (Hrg. Tr. p. 118) A chest x-ray and CT scan showed fluid had built up in the area where he had undergone surgery. (Jt. Ex.

4, pp. 50–52) UIHC placed Hastings on oxygen and sent him home. (Jt. Ex. 4, p. 55; Hrg. Tr. pp. 118–19)

Hastings continued to have shortness of breath and on January 9, 2017, he woke up coughing and gasping for air. (Jt. Ex. 4, p. 55) He complained of feeling feverish with chills and experiencing fatigue and lack of appetite. (Jt. Ex. 4, p. 55) Physicians at UIHC performed thoracentesis, which revealed the fluid to be blood. (Jt. Ex. 4, pp. 58–59; Hrg. Tr. pp. 119–20) On January 13, 2017, Hastings underwent right thoracoscopic decortication by Evgeny Arshava, M.D. (Jt. Ex. 4, pp. 60–61) Dr. Arshava removed the fluid that had built up in Hastings's chest cavity and repaired his damaged artery. (Hrg. Tr. p. 121–23) Hastings had to wear a cast to immobilize his shoulder. (Hrg. Tr. p. 125)

Hastings followed up with Dr. Pascarella on February 16, 2017, complaining of weakness in his right arm after the thoracoscopic decortication. (Jt. Ex. 4, p. 68) Dr. Pascarella referred him to Dr. Reddy and prescribed valium and aggressive physical therapy. (Jt. Ex. 4, p. 69) Dr. Reddy agreed with Dr. Pascarella's prescription of aggressive physical therapy for at least three months and assigned Hastings work restrictions. (Jt. Ex. 4, p. 69–70)

Hastings participated in physical therapy in an effort to rehabilitate his shoulder. (Hrg. Tr. p. 127) Hastings had eighty physical therapy appointments from February 2017 through August 2017. (Hrg. Tr. p. 127) Physical therapy initially helped reduce the pain Hastings felt in his neck and improved his mobility. (Jt. Ex. 4, p. 71–76)

On April 11, 2017, Dr. Pascarella noted after a long discussion with Hastings on his surgeries, "I believe his current symptoms may be ascribed to a locked shoulder problem due probably to inactivity, that predates his TOS surgery and had worsened after the VATS thoracoscopy." (Jt. Ex. 4, p. 76) Hastings began to have issues as he progressed in physical therapy. (Jt. Ex. 4, p. 77) He dislocated his shoulder three times in late April when attempting to lift a five-pound weight, which was extremely painful. (Jt. Ex. 4, p. 77; Hrg. Tr. p. 128) Drs. Pascarella and Reddy referred Hastings to Dr. Nepola for further evaluation of his shoulder. (Jt. Ex. 4, p. 78)

Hastings began to receive care for his mental health in April of 2017. (Jt. Ex. 6, pp. 174–85) The defendants authorized care at Hillcrest Family Services. (Hrg. Tr. pp. 137–38) Hastings treated at Hillside with psychiatrist, Mark Mittauer, M.D., and therapist Richard Corfman. (Jt. Ex. 6, pp. 186–222)

The first attorney to serve as claimant's counsel in this case sent Dr. Reddy a check-box letter dated May 15, 2017. (Cl. Ex. 3, pp. 15–16) On the question of whether Dr. Reddy referred Hastings for treatment of a shoulder condition caused, aggravated, or materially contributed to by the work injury, Dr. Reddy indicated in the positive. (Cl. Ex. 3, p. 15) He also indicated that the need for surgery, if recommended by Dr. Nepola, was caused by the work injury. (Cl. Ex. 3, p. 15) Dr. Reddy signed and dated his answers on May 19, 2017. (Cl. Ex. 3, p. 15)

On July 18, 2017, Hastings saw Dr. Nepola, who noted, "He inexplicably has had worsening of his shoulder, possibly due to neurologic dysfunction versus residual stiffness secondary to immobilization." (Jt. Ex. 4, p. 84) Dr. Nepola ordered an MRI and CT scan, which showed no rotator cuff tear, mild degenerative changes, and glenoid dysplasia. (Jt. Ex. 4, p. 93) Dr. Nepola recommended a glenohumeral injection to determine if this is the main source of Hastings's shoulder pain. (Jt. Ex. 4, p. 93)

Two weeks later, Eric Aschenbrenner, M.D., administered the injection. (Jt. Ex. 4, p. 97) Hastings informed Dr. Nepola on the day after the injection it had substantially improved his shoulder pain for a short time. (Jt. Ex. 4, pp. 98–99; Hrg. Tr. p. 132) Dr. Nepola opined Hastings's congenitally dysplastic glenoid was "likely leading to internal derangement and early arthritis in his shoulder." (Jt. Ex. 4, p. 100) He recommended conservative treatment for as long as possible before considering a total shoulder replacement. (Jt. Ex. 4, p. 99)

On September 26, 2017, Hastings saw Dr. Nepola complaining of aching and stabbing shoulder pain, intermittent numbness in his right forearm and right upper chest, pain in his right shoulder when he lifts his left arm, and sensitivity to heat and cold. (Jt. Ex. 4, p. 104) Dr. Nepola and Hastings "had a long discussion that he may be at the beginning of a series of surgeries that will result in worse, untreatable shoulder pain" and that "[t]here is not shoulder treatment that will make his shoulder normal." (Jt. Ex. 4, p. 106) Hastings decided to move forward with a total right shoulder replacement with custom glenoid prosthesis. (Jt. Ex. 4, pp. 106–117) He continued care with Dr. Nepola while the custom prosthesis was fabricated. (Jt. Ex. 4, p. 119–22; Hrg. Tr. p. 135)

Defense counsel arranged for Hastings to undergo an IME with Robert L. Broghammer, M.D., on January 8, 2018. (Def. Ex. B, p. 1) Dr. Broghammer reviewed medical records relating to Hastings's care and issued an IME report. (Def. Ex. B, pp. 1–15) On the question of whether further surgical intervention was reasonable and necessary, he opined that a total shoulder replacement by Dr. Nepola was "[t]he only long-term solution." (Def. Ex. B, p. 15)

In a letter dated January 19, 2018, the attorney who first represented Hastings in this case asked Dr. Nepola to opine with respect to what caused the need for the total shoulder replacement surgery. (Cl. Ex. 4, p. 17) Dr. Nepola responded in a letter dated May 25, 2018. (Cl. Ex. 4, pp. 18–19) On the question of whether Hasting's work injury caused or contributed to the need for the procedure, Dr. Nepola opined:

> Yes, to the nearest degree of medical certainty, it is likely that the reported work injury at least exacerbated his congenital shoulder condition. I have not seen any documentation indicating Mr. Hastings complained of shoulder pain or dysfunction prior to the reported work incident, despite his congenital condition. The mechanism of injury (distraction of the shoulder with heavy lifting) is consistent with at least exacerbating and possibly materially aggravating his underlying condition. He has continued to complain of symptoms since the time of his injury, despite other interventions. For these reasons it is likely that the reported work injury at

> least contributed to the need for surgery, again, to the nearest degree of medical certainty.

(Cl. Ex. 4, pp. 18–19)

In response to the question Hastings's work injury at Orkin caused his shoulder condition to become symptomatic requiring the surgery, Dr. Nepola stated:

> Yes, according to the history given by the patient and the provided documentation, Mr. Hastings had a functional shoulder prior to the work incident. As above, the mechanism is consistent with causing at least an exacerbation or "lighting up" of the pre-existing shoulder condition, and possibly materially aggravated it. To the nearest degree of medical certainty the work injury contributed to the current need for surgery.

(Cl. Ex. 4, p. 19)

In response to a letter from defense counsel, Dr. Broghammer issued a second IME report on June 22, 2018, after reviewing additional medical records. (Def. Ex. B, pp. 17–18) As an initial matter, Dr. Broghammer did not address whether the work injury aggravated or lighted up Hastings's previously asymptomatic congenital defect. (Def. Ex. B, pp. 28–29) This fact makes his opinions less persuasive. As discussed below, there are additional facts that make his opinions lack credibility.

Defense counsel asked if Dr. Broghammer was "able to determine that the claimed injury was due to a congenital abnormality." (Def. Ex. B, p. 26) He answered in the affirmative, explaining:

> The medical records are quite clear in this regard. Mr. Hastings was noted on several imaging examinations to have a congenitally dysplastic glenoid with hypertrophy of the labrum. As you know the congenital means present from birth. In addition, an imaging study completed prior to the worker's alleged injury with a CAT scan completed in March 2015 demonstrated an abnormal glenoid with posterior dysplasia. These changes and findings would not be consistent with an acute injury but would instead be due to a congenital abnormality.

(Def. Ex. B, p. 27)

Dr. Broghammer makes no mention of Hastings being asymptomatic before he lifted the fan while working for Orkin. He does not explain why Hastings would develop symptoms immediately after lifting the fan because of the congenital abnormality that was asymptomatic before lifting the fan. This undermines the credibility of his opinion on causation.

The defendants denied liability for Hastings's ongoing medical care after Dr. Broghammer issued his report on causation. (Hrg. Tr. pp. 137–38; Cl. Ex. 14, p. 135; Def. Ex. D, pp. 2–3) The defendants' denial of Hastings's claim effectively meant he had

to cease care at Hillside for his mental health. (Hrg. Tr. p. 138) At the time of the denial, Hastings was under a health insurance policy provided through Michelle's work. (Hrg. Tr. p. 138) Under that policy, he would have had to pay two hundred dollars per appointment at Hillside. (Hrg. Tr. p. 138) That amount was too expensive, given their financial status with him off work and no longer receiving workers' compensation, so Hastings stopped seeing Dr. Mittauer and Corfman. (Hrg. Tr. p. 138)

Dr. Nepola performed the total shoulder replacement surgery on August 31, 2018. (Jt. Ex. 4, pp. 123–26; Hrg. Tr. p. 138–39) In a letter dated September 4, 2018, Dr. Nepola restricted Hastings from pushing or pulling with his right arm for two months and gave him permanent work restrictions of no lifting more than five pounds with his right arm. (Jt. Ex. 4, p. 131) He participated in approximately thirty sessions of physical therapy following the surgery to help build up strength in his arm. (Hrg. Tr. pp. 142–44; Jt. Ex. 4, p. 145)

On August 19, 2020, claimant's counsel wrote to Dr. Nepola requesting he provide his opinion on causation with respect to thoracic outlet decompression surgery and to provide permanent functional impairment for all conditions he believes to be related to Hastings's work injury. (Cl. Ex. 4, pp. 20–21) Dr. Nepola responded in a letter dated September 22, 2020. (Cl. Ex. 4, pp. 22–23) With respect to the surgeries Hastings underwent before his total shoulder replacement, he opined:

> To the nearest degree of medical certainty, I believe Mr. Hasting[s]'s need for the right thoracic outlet decompression surgery on 12/21/2016 by Dr. Chandan Reddy and Dr. Luigi Pascarella for venous outlet syndrome, was directly caused by the marked compromise of his right upper extremity vasculature, which ensued at the time of the injury he sustained at work on 08/11/2016. The recovery from the surgery was complicated by persistent pleural effusion/hemothorax, which necessitated the VAT thorascopic decortication procedure, completed by Dr. Arshava on 01/13/2017. Therefore, to the nearest degree of medical certainty, the need for both surgeries were caused by the work injury sustained on 08/11/2016.

(Cl. Ex. 4, p. 22) Dr. Nepola refused the request to opine on permanent functional impairment. (Cl. Ex. 4, p. 23)

Claimant's counsel arranged for an IME with Robin Sassman, M.D. (Cl. Ex. 7) Dr. Sassman performed a records review and examined Hastings on December 9, 2020. (Cl. Ex. 7, pp. 60–78) On causation, Dr. Sassman opined the work injury was the most likely cause of Hastings's thoracic outlet syndrome and the persistent pleural effusion was a sequela of his thoracic outlet decompression surgery. (Cl. Ex. 7, p. 80) With respect to the right total shoulder replacement, Dr. Sassman opined that because Hastings was asymptomatic in his shoulder before the work injury, had his right shoulder immobilized for about two months following the thoracic outlet decompression and the strength and neurological status of his shoulder deteriorated during this time, the work injury and the subsequent care Hastings received for it were substantial

aggravating factors of his congenital shoulder condition, necessitating the procedure. (Cl. Ex. 7, p. 80)

Dr. Sassman found Hastings reached maximum medical improvement on August 31, 2019, one year after the date of Dr. Nepola's surgery. (Cl. Ex. 7, p. 82) Dr. Sassman used the Fifth Edition of the American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment (Guides) to opine on Hastings's permanent functional impairment. (Cl. Ex. 7, p. 82) She used Figures 16-40, 16-43, and 16-46 to conclude Hastings sustained a twenty-four percent impairment to the right upper extremity. (Cl. Ex. 7, p. 82) Dr. Sassman found he sustained a twenty-four percent upper extremity impairment due to the arthroplasty based on Table 16-27. (Cl. Ex. 7, p. 82) For Hastings's residual nerve impairment relative to the brachial plexus and thoracic outlet syndrome, she used the procedures set forth in Guides, Example 16-10, and Tables 16-10 and 16-11 to conclude he sustained a forty-seven percent upper extremity impairment or twenty-eight percent to the whole person. (Cl. Ex. 7, pp. 83–84) Dr. Sassman then used the Combined Values Chart on page 604 to find Hastings has sustained a forty-six percent whole person impairment caused by the work injury. (Cl. Ex. 7, p. 84)

Defense counsel shared Dr. Nepola's opinions with Dr. Broghammer and asked his opinion after reading them. (Def. Ex. B, pp. 30–34) In a letter dated December 16, 2020, he affirmed his opinion on the cause of Hastings's need for thoracic outlet decompression surgery "was necessitated by his congenital abnormalities, including his cervical rib" and doubled down on the cervical rib as the most likely cause without addressing Dr. Nepola's observation, based on his firsthand experience as a treating physician, that Hastings did not have a cervical rib. (Def. Ex. B, p. 32–34) Dr. Broghammer did not address Dr. Nepola's opinion that the work injury was the cause of the need for Hastings to undergo total shoulder replacement surgery. (Def. Ex. B, pp. 32–34) Nor did Dr. Broghammer specifically address whether the work injury aggravated or lighted up Hastings's congenital condition. (Def. Ex. B, pp. 32–34)

Defense counsel shared Dr. Sassman's report with Dr. Broghammer and requested his assessment, which he provided in a letter dated January 26, 2021. (Def. Ex. B, pp. 35–38) Dr. Sassman's report did not change Dr. Broghammer's opinion on causation. (Def. Ex. B, p. 37) He affirmed that he believed Hastings's subclavian thrombosis was likely caused by the presence of a cervical rib. (Def. Ex. B, p. 37)

Claimant's counsel followed up with Dr. Nepola in multiple letters seeking additional information. (Cl. Ex. 4, pp. 24–28) In a letter dated February 22, 2021, Dr. Nepola stated he had reviewed Hastings's medical records, including the report by Dr. Broghammer of January 26, 2021, and the report by Dr. Sassman of January 4, 2021. (Cl. Ex. 4, p. 29) Dr. Nepola concurred with Dr. Sassman's permanent functional impairment rating. (Cl. Ex. 4, p. 32)

As discussed above, Dr. Broghammer opined Hastings developed thoracic outlet syndrome because of he had a cervical rib. (Def. Ex. B, p. 27) He also stated the cause of Hastings requiring total shoulder replacement was his congenital condition as opposed to the work injury. (Def. Ex. B, p. 27) Dr. Nepola explained that he disagreed with Dr. Broghammer's opinion because:

> Hasting['s] work related incident of 8/11/2016 was related to a change in the condition of his right arm and shoulder. As I have written before, the acute injury noted by both Drs. Erin Kennedy and Scott Schemmel of Mr. Hastings['s] right upper extremity, involving swelling, pain, and discoloration with distention of his venous system commensurate with the "varicosities" seen was to the nearest reasonable degree of medical certainty due to the incident lifting the 80-poung fan while he was working for Orkin on that day. This started the cascade of events that likely the acute thrombosis of his subclavian [sic] vein which then became chronic several weeks later. Dr. Broghammer states that in his medical opinion "while Mr. Hastings may not have had symptoms before his alleged injury[, i]n my medical opinion to a reasonable degree of medical certainty the active [act of] picking up a large fan would not rise to the level of materially exacerbating, accelerating beyond normal progression, or 'lighting up' the pre-existing condition." This is not true. I have seen many cases of thoracic outlet syndrome. These are difficult diagnoses and are often missed by evaluating physician[s] unfamiliar with the condition. There is plentiful medical literature regarding thoracic outlet syndrome and its etiologies. Both traumatic and atraumatic etiologies have been documented in literature. One such trauma related injury, Paget-Schroetter Syndrome is a known condition to be "effort-induced." It is certainly rate, but it is very real. Treatment often involves requirement to decompress the thoracic outlet by releasing the scalenus anterior muscle and resecting the first rib when necessary. Dr. Broghammer as he is likely unfamiliar with this condition and its surgical treatment refers to the resection of a "cervical rib" which can be an instigating pathologic anatomic entity. Were he to have read the record carefully he would have noted that neither in the imaging report nor in the operative note does anyone refer to a cervical rib. Mr. Hastings had his first rib removed which is more usual when this procedure is undertaken.

(Cl. Ex. 4, p. 31) Dr. Nepola reiterated his opinion that the work injury caused the need for the surgeries performed by Drs. Pascarella and Reddy on December 21, 2016, and Dr. Arshava on December 21, 2016, "which was a sequela" of the first surgery. (Cl. Ex. 4, p. 32)

> Further, Dr. Nepola opined:
>
> [R]egarding his shoulder problem associated with an injury to a congenitally abnormal right shoulder with a dysplastic glenoid, shoulder pain was never clinically noted as a problem by the patent before his injury

> of 8/11/2016. He certainly was predisposed to having a shoulder problem. But it was the incident lifting the fan on 8/11/2016 with subsequent effort induced thoracic outlet syndrome with all of its attendant trauma that reduced his shoulder from being able to be elevated overhead to 140 degrees on the day of his visit with me in 2016 to a markedly painful and dysfunctional shoulder which can only lift to 40 degrees when he was referred back to me after his surgeries on 11/7/2017. Had this incident not happened I must opine that his shoulder may never have come to a shoulder replacement. But unfortunately, the trauma of 8/11/2016 started a chain of events which ultimately left the patient and I have no choice but to perform the shoulder arthroplasty which we did and which improved but did not restore his shoulder to [. . .] normal state.

(Cl. Ex. 4, p. 32)

Unlike Dr. Broghammer, who performed a records review, Dr. Nepola was personally involved in Hastings's care at the time and later performed surgery on him. Dr. Nepola is also well known to the agency due to his extensive experience treating shoulders. Dr. Nepola's statement regarding whether Hastings had a cervical rib is therefore most persuasive. Dr. Broghammer's opinion on the cause of Hastings developing thoracic outlet syndrome is not credible. The same is true of his opinion that the need for thoracic outlet decompression was secondary to his congenital abnormality. Dr. Nepola's opinion on what caused the need for total shoulder replacement more persuasive than Dr. Broghammer's.

Claimant's counsel sought the opinion of Dr. Mittauer, Hastings's psychiatrist, regarding his diagnoses, their cause, and any disability they caused. (Cl. Ex. 9, pp. 100–01) In a letter dated July 25, 2021, Dr. Mittauer shared his diagnoses of Major Depressive Disorder (single episode, moderate severity), Post-Traumatic Stress Disorder (PTSD), Generalized Anxiety Disorder, Other Specified Anxiety Disorder (stress-induced panic attacks), and Insomnia Disorder. (Cl. Ex. 9, p. 102) Dr. Mittauer opined all of these conditions were caused by the stipulated work injury and that he erroneously attributed the cause of Hastings's PTSD to childhood abuse in his initial intake note and subsequently repeated that mistake. (Cl. Ex. 9, p. 103) Dr. Mittauer clarified that the sole cause of Hastings's PTSD was the work injury. (Cl. Ex. 9, p. 103)

Dr. Mittauer shared that he has prescribed antidepressants (venlafaxine, duloxetine, trazodone, and mirtazapine), antianxiety medications (hydroxyzine, prazosin, and gabapentin), and hypnotic medications for sleep (mirtazapine, solpidem, and trazodone). (Cl. Ex. 9, p. 102) He shared he has maximized the dose of some of these prescriptions. (Cl. Ex. 9, p. 102) Dr. Mittauer opined Hastings "will most likely not experience significant improvement of or resolution of his psychiatric conditions. As long as he has severe pain, and associated disability, his symptoms of depression, anxiety, and insomnia will persist." (Cl. Ex. 9, p. 103)

Dr. Mittauer used Chapter 14 of the Guides to assess Hastings's permanent impairment from psychiatric conditions caused by the work injury as follows:

> Regarding Activities of Daily Living, the rating is Class 3 (moderate impairment). His symptoms impair his sleep, ability to drive, sexual functioning, and personal hygiene.
>
> Regarding Social Functioning, the rating is Class 4 (marked impairment). His is very irritable and this interferes with interactions with others.
>
> Regarding Concentration, Persistence and Pace, the rating is Class 4 (marked impairment). His symptoms interfere with his ability to concentrate on tasks, complete tasks efficiently and maintain pace.
>
> Regarding Adaptation, the rating is Class 5 (extreme impairment). His symptoms interfere with his ability to report to work consistently, interact with others, make decisions, and complete tasks especially complex ones.

(Cl. Ex. 9, p. 103)

Claimant's counsel requested opinions from Corfman, Hastings's therapist, about his mental health conditions and opinion on their cause. (Cl. Ex. 8, pp. 93–94) In a letter dated July 30, 2021, Corfman opined Hastings was receiving psychotherapy with him for major depressive disorder, post-traumatic stress disorder (PTSD), generalized anxiety disorder, and anxiety/panic disorder. (Cl. Ex. 8, p. 95) Corfman also shared Hastings has symptoms of anxiety and depression and major insomnia related to body pain. (Cl. Ex. 8, p. 95) He opined the diagnoses were "precipitated" by the stipulated work injury. (Cl. Ex. 8, p. 95) Corfman has extensive experience treating individuals with these diagnoses. (Cl. Ex. 8, pp. 96–98)

Corfman described Hastings's symptoms thusly:

> Mr. Hastings has moderate impairment of sleep, motivation, ability to drive and perform physical tasks, sexual functioning, and personal hygiene. He is irritable and agitated most of the time which interferes with his familial and social functioning and relationships. He has difficulty concentrating, focusing, and following through due to his sleep difficulties, physical pain, and psychological despair.

(Cl. Ex. 8, p. 95)

Corfman opined Hastings had "shown brief moments of positive response but none that have been of a lasting nature." (Cl. Ex. 8, p. 95) According to Corfman, Hastings is unlikely to experience significant improvement or resolution of his psychiatric conditions because his ongoing physical symptoms fuel his conditions. (Cl. Ex. 8, p. 95)

The opinions of Corfman and Dr. Mittauer are persuasive. The weight of the evidence in this case shows it is more likely than not the stipulated work injury caused Major Depressive Disorder (single episode, moderate severity), Post-Traumatic Stress Disorder (PTSD), Generalized Anxiety Disorder, Other Specified Anxiety Disorder (stress-induced panic attacks), and Insomnia Disorder. The work injury is the cause of permanent mental impairment. Hastings has undergone care for these conditions with Corfman and Dr. Mittauer that is reasonable, necessary, and beneficial. Hastings incurred the costs for this care detailed in Claimant's Exhibits

On September 21, 2021, Dr. Pascarella testified in a deposition for this case. (Def. Ex. G) Between the care he provided to Hastings and the deposition, he changed employers from UlHC to the University of North Carolina. (Def. Ex. G, p. 18, Depo. Tr. p. 5) Dr. Pascarella testified that when making a determination on causation, he prefers to collect as much information as possible, including medical records from before the injury in question. (Def. Ex. G, p. 3, Depo. Tr. p. 10) However, he did not obtain any such preexisting records in this case. (Def. Ex. G, p. 3, Hrg. Tr. p. 10)

Dr. Pascarella testified that in his experience more than seventy percent of people with cervical ribs do not have thoracic outlet syndrome and the remainder develop it. (Def. Ex. G, p. 2, Depo. Tr. pp. 6, 8) With respect to the stipulated work injury, Dr. Pascarella initially testified:

> I think he used to work at Orkin, he was an Orkin man, and he was lifting I think a fan or something really heavy. And I think it stretched the muscles in his neck -- or his upper extremity, following which he developed two conditions that are very important to consider; number one, upper extremity – neck and upper extremity pain, and number two, evidence of thrombosis, of a clot [. . .] of the subclavian vein.
>
> Okay. Now, before this accident at work, Mr. Hastings was a functional individual in my – in my recollection of Mr. Hastings in addition per the notes that I have been reading my notes as well.

(Def. Ex. G, p. 2, Depo. Tr. pp. 6–7)

When asked about the work injury Hastings sustained when lifting a fan, Dr. Pascarella further testified:

> So I see this very often actually in patients with thoracic outlet syndrome. Now, while etiology of thoracic outlet syndrome is essentially unknown, however, a number of patient[s] present[] to our observation after [m]any type[s] of incidents and accidents involving [the] neck, involve the upper extremity, including lifting heavy objects. Okay. And in particular in these patients there is an increased effort in the muscles in the neck, in particular in this area and in this area, and causing essentially stretching of these muscles and sometimes stretching of the nerve that runs here.
>
> ****

And in some patients also the effort may cause clotting, clotting of veins.

(Def. Ex. G, p. 6, Depo. Tr. pp. 22–23)

Dr. Pascarella also explained that the work injury causing Hastings's thoracic outlet syndrome was his hypothesis. (Def. Ex. G, p. 6, Depo. Tr. p. 24) When claimant's counsel asked whether the work injury was more likely than not the cause of Hastings's thoracic outlet syndrome, Dr. Pascarella initially testified, "Yes. For me, I mean, while I don't do independent medical examinations, okay, the base of my experience with patients with thoracic outlet syndrome, these type of accidents at work may cause these problems. (Def. Ex. G, pp. 6–7, Depo. Tr. pp. 24–25)

Dr. Pascarella testified that the work injury causing Hastings's thoracic outlet syndrome was both "likely" and "possible." (Def. Ex. F, p. 7, Depo. p. 27) He then explained that the words "likely" and "possible" have the same meaning to him. (Def. Ex. F, p. 7, Depo. Tr. p. 28) Dr. Pascarella was unable to articulate a clear explanation of how the words have the same meaning to him. Dr. Pascarella's inability to clearly articulate the meaning he ascribes to both "likely" and "possible" and the fact he did not review all of Hastings's medical records before testifying in the deposition undermine the persuasiveness of Dr. Pascarella's opinion.

For the reasons discussed above, the opinions of Drs. Broghammer and Pascarella are unpersuasive and the opinions of Drs. Nepola and Sassman are more credible. The weight of the evidence establishes the work injury Hastings sustained on August 11, 2016, was a significant factor in causing the need for the surgeries performed by Drs. Reddy, Pascarella, Arshava, and Nepola. It is more likely than not the work injury resulted in Hastings sustained a permanent functional impairment of forty-eight percent to the whole body.

Dr. Mittauer and Corfman left Hillside after Hastings stopped receiving care from them as a result of the defendants denying his workers' compensation claim. (Hrg. Tr. pp. 146–47) Hastings qualified for Medicare and has a new private health insurance policy. (Hrg. Tr. p. 146) This allowed him to resume care with Dr. Mittauer and Corfman for his continuing mental health conditions. (Hrg. Tr. p. 146–47) The care Dr. Mittauer and Corfman provide is beneficial to Hastings. (Hrg. Tr. pp. 161–62)

Hastings received care after the defendants denied his workers' compensation claim. While private insurance covered a share of the expenses for this care, Hastings has had to cover some of it out of pocket. It is more likely than not the expenses set forth in Claimant's Exhibit 15 are related to the work injury. Further, the evidence shows the mileage itemized in Claimant's Exhibit 12 is related to that care.

Hastings never returned to work at Orkin after a supervisor instructed him to leave the premises on August 13, 2016. (Hrg. Tr. pp. 102–103) While Hastings had a conversation about potentially taking a regional management job with Orkin, those talks fell through because of his ongoing workers' compensation claim. (Hrg. Tr. pp. 129–30)

The weight of the evidence establishes Orkin chose to end its employment relationship because it did not have work within his permanent work restrictions.

In January of 2021, Barbara Laughlin, M.A., performed an employability assessment of Hastings. (Cl. Ex. 6, p. 35) Laughlin reviewed medical records relating to Hastings's injuries, interviewed Hastings, reviewed interrogatory answers from the litigation of this case, and performed labor market research before issuing a report dated January 2, 2021. (Cl. Ex. 6, pp. 35–55) She concluded he had sustained a 46.2 percent loss of generally transferrable occupations under Dr. Nepola's work restrictions and a 93.9 percent loss to all directly transferable occupations based on Dr. Sassman's work restrictions. (Cl. Ex. 6, pp. 45–46) She noted Hastings is not skilled at using computers, he can no longer use his CDL as an over-the-road trucker, and his permanent work restrictions. (Cl. Ex. 6, pp. 48–49) Laughlin further opined Hastings would require a high level of accommodation and his physical limitations due to the will affect his ability to get hired. (Cl. Ex. 6, pp. 48–49)

Hastings credibly described his symptoms at the time of hearing during his testimony. He testified he continued to experience pain in his shoulder area and arm. (Hrg. Tr. p. 148) On a good day, he rates his pain at a level of two or three on a scale from zero to ten. (Hrg. Tr. p. 148) Activity and weather changes can increase his pain. (Hrg. Tr. p. 148) He continued to experience what he described as a "charley horse" in his right biceps on a regular basis when his muscle knots up. (Hrg. Tr. pp. 150–51)

Ongoing tingling and numbness are also a recurrent part of Hastings's life. (Hrg. Tr. p. 151) He experienced numbness in his right forearm and down through his ring and pinky fingers. (Hrg. Tr. p. 151) The tingling and numbness are constant. (Hrg. Tr. p. 151) Using his right arm to perform tasks such as typing or picking up an object makes the sensation worse. (Hrg. Tr. p. 152)

Hastings also experiences limited function with his right arm. He generally avoids using his right arm for lifting. (Hrg. Tr. pp. 149, 160–61) Hastings has problems writing longhand, typing, and texting with his right arm. (Hrg. Tr. pp. 149–50) He also has limited range of motion with his right shoulder and, consequently, his right arm as well. (Hrg. Tr. p. 152) Hastings struggles opening jars because of the weakness in his right hand that has resulted from his total right shoulder replacement. (Hrg. Tr. p. 153)

Hastings had muscles removed as part of the treatment for his shoulder. (Hrg. Tr. pp. 154–55) This has reduced the range of motion in his neck, which means he can no longer move his head like he could before the work injury. (Hrg. Tr. pp. 154–55) Hastings also experiences numbness in his upper right chest after the surgeries. (Hrg. Tr. p. 155)

The injury has permanently impacted Hastings's ability to breath. (Hrg. Tr. p. 156) Extreme hot or cold temperatures and humidity give him trouble breathing with his right lung. (Hrg. Tr. p. 156–57) This, in turn, makes physical activity such as walking more difficult for Hastings. (Hrg. Tr. p. 156)

The physical limitations stemming from the work injury limit Hastings in his household and grooming activities. (Hrg. Tr. p. 163) He is unable to mow his lawn or shovel snow, so he hires neighborhood kids to do so. (Hrg. Tr. p. 163) Hastings is unable to reach under his left arm with his right arm, so he had to install a shower head that he can move to reach this area of his body. (Hrg. Tr. p. 163) He has had to develop new ways to dress himself, due to his right arm's limited function, which makes it take longer. (Hrg. Tr. p. 163–64)

Further, the stipulated work injury and resultant surgeries have limited Hastings's hobbies. Hastings attempted to fish on one occasion and while he could cast left-handed, he could not hold the rod and reel in a fish. (Hrg. Tr. p. 166) He attempted to shoot left-handed to see if he would still be able to hunt but he is not coordinated enough to do so. (Hrg. Tr. p. 166)

There was also testimony during Hastings's deposition and the hearing on dart-throwing. This testimony is of little probative value regarding the disputed factual and legal issues submitted to the agency in this case. Nonetheless, the defendants have argued Hastings's testimony regarding dart-throwing undermines his credibility to such an extent it renders all of his testimony unreliable. Defense counsel even accused Hastings of perjury during the hearing. (Hrg. Tr. pp. 240, 241, 243) The undersigned finds the defendants' characterizations of Hastings's testimony unpersuasive. Hastings generally provided credible testimony in this case. With respect to his dart-throwing, the weight of the evidence establishes the following.

Hastings has fun throwing darts. (Def. Ex. F, p. 9, Depo Tr. pp. 30–31) Hastings was an avid dart-thrower before the stipulated work injury, throwing three or four nights per week in leagues and six or seven days per week total. (Hrg. Tr. p. 167) He participated in tournaments, once placing as high as seventeenth in singles in a world tournament held in Chicago. (Hrg. Tr. p. 168)

After the injury, Hastings throws darts less often even though doctors encouraged him to participate because the motions involved in the activity would be beneficial to his right arm and shoulder. (Hrg. Tr. pp. 167–71; Def. Ex. F, pp. 8–9, 13–14, Depo. Tr. pp. 29–33, 49–50, 60) The work injury has limited Hastings's right-arm function such that he has to hold it up with his left hand to throw darts right-handed or he has to throw left-handed. (Def. Ex. F, pp. 14–16, Depo. Tr. pp. 50–60; Hrg. Tr. p. 59) The work injury's impact on how often Hastings throws darts includes him quitting entirely for periods of time before trying again later. (Def. Ex. F. p. 16–17, Depo. Tr. pp. 60–64; Hrg. Tr. pp. 198–201) At no time did Hastings intend to quit throwing darts forever. (Hrg. Tr. p. 240) Hastings has thrown in multiple dart leagues since the injury. (Hrg. Tr. pp. 206–240)

There was also an issue that came to light at hearing regarding the failure to disclose a document relating to dart-throwing that Hastings obtained after defense counsel orally requested records showing "how often [Hastings had] thrown darts and how [he] did" during Hastings's deposition, which took place on September 17, 2021, after discovery had closed under the Hearing Assignment Order the agency issued in

this case. (Def. Ex. F, p. 19, Depo. Tr. pp. 72–73; Hrg. Tr. pp. 201–03, 216–18, 230) Hastings and his wife believed in good faith the document was of little probative value with respect to his dart-throwing activities. (Hrg. Tr. pp. 216–17, 230) Claimant's counsel stated he reached the same conclusion which is why he did not turn over the document to defense counsel until its existence came to light during the hearing. (Hrg. Tr. pp. 217–18, 230) The undersigned finds that the record contains insufficient information from which to make findings of fact by a preponderance of the evidence regarding what the document's contents reflects other than the fact that Hastings participated in dart-throwing leagues before and after his injury, which is undisputed between the parties. (Hrg. Tr. pp. 221–30)

The record also establishes it is more likely than not that neither Hastings nor his wife knew there was a website containing information about their dart-throwing before the hearing. (Hrg. Tr. pp. 63, 201–16) Defense counsel independently discovered the website and Hastings learned of its existence during cross-examination at hearing. (Hrg. Tr. pp. 215–16) There is an insufficient basis in the record from which to conclude Hastings or his wife knew of the website before the hearing and attempted to hide it from anyone.

Hastings is motivated to work. He has applied for multiple jobs. (Hrg. Tr. p. 178) However, Hastings has been rejected due to the permanent work restrictions assigned by Dr. Nepola. (Hrg. Tr. pp. 178–80) Hastings applied for disability benefits from the federal Social Security Administration (SSA) through the carrier that held the long-term disability policy under which he collected benefits. (Hrg. Tr. p. 180) On September 28, 2018, the SSA issued a decision finding him eligible for benefits. (Hrg. Tr. p. 182–84; Cl. Ex. 13, pp. 123–29)

Hastings continues to receive care for his injuries. He is on a schedule to follow up annually with Dr. Nepola. (Hrg. Tr. p. 161) He sees Corfman biweekly for counseling that is helpful to his mental health. (Hrg. Tr. pp. 161–62) Hastings sees Dr. Mittauer approximately once per month for medication relating to his mental health, which helps his condition. (Hrg. Tr. p. 162)

CONCLUSIONS OF LAW

In 2017, the Iowa legislature amended the Iowa Workers' Compensation Act. See 2017 Iowa Acts, ch. 23. The 2017 amendments apply to cases in which the date of an alleged injury is on or after July 1, 2017. Id. at § 24(1); see also Iowa Code § 3.7(1). Because the injury at issue in this case occurred before July 1, 2017, the Iowa Workers' Compensation Act in effect before the 2017 amendments applies. Smidt v. JKB Restaurants, LC, File No. 5067766 (App. Dec. 11, 2020).

1. Healing Period Benefits.

An injured employee is entitled to temporary total disability (TTD) or healing period (HP) benefits when the employee is unable to work during a period of convalescence caused by a work injury. Iowa Code §§ 85.33(1), 85.34(1); see also

Evenson v. Winnebago Indust., 881 N.W.2d 360, 373 (Iowa 2016). Temporary benefits compensate an employee for lost wages. Mannes v. Fleetguard, Travelers Ins. Co., 770 N.W.2d 826, 830 (Iowa 2009). Whether an employee's injury causes a permanent disability dictates whether the employee's temporary benefits are considered TTD or HP. Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 200 (Iowa 2010) (citing Clark v. Vicorp Rests., Inc., 696 N.W.2d 596, 604–05 (Iowa 2005)). If there is a permanent disability, the benefits are considered HP; if not, they are TTD. See id. As discussed below, Hastings has sustained a permanent disability so the type of temporary benefits at issue are healing period benefits.

Iowa Code section 85.34(1) provides "alternative markers of the end of the healing period." Waldinger Corp. v. Mettler, 817 N.W.2d 1, 9 (Iowa 2012); see also Evenson v. Winnebago Indus., 881 N.W.2d 360, 372 (Iowa 2012). The alternative markers are when the injured employee:

1) Returns to work;

2) Reaches maximum medical improvement (MMI) for the injury; or

3) Is medically capable of returning to employment substantially similar to that which the employee was engaged at the time of injury. Iowa Code § 85.34(1); Evenson, 881 N.W.2d at 372.

The first of the alternative markers to occur ends a healing period. Id.; Evenson, 881 N.W.2d at 372 (Iowa 2012); Crabtree v. Tri-City Elec. Co., File No. 5059572, pp. 2−3 (App., Mar. 20, 2020). PPD benefits "begin at the termination of the healing period." Id. at § 85.34(2); Evenson, 881 N.W.2d at 372. As found above, Hastings reached MMI on August 31, 2019. He is therefore entitled to healing period benefits from July 23, 2018, the last day before the defendants denied the claim and ceased payment of benefits, through August 30, 2019. This time period equals fifty-seven weeks and four days or 57.57 weeks.

2. Permanent Disability.

Iowa Code section 85.34(3) is entitled, "Permanent total disability," but does not define the term or contain a framework for determining whether an injured employee is permanently and totally disabled due to a work injury. The Iowa Supreme Court has held the factors used to evaluate industrial disability under section 85.34(2)(*v*) are also used to determine whether a work injury has caused permanent total disability under section 85.34(3). See Wal-Mart Stores, Inc. v. Caselman, 657 N.W.2d 493, 495 (Iowa 2003) (quoting Guyton v. Irving Jensen Co., 373 N.W.2d 101, 103 (Iowa 1985)).

In Guyton v. Irving Jensen Co., 373 N.W.2d 101 (Iowa 1985), the Iowa court formally adopted the "odd-lot doctrine." Under that doctrine a worker becomes an odd-lot employee when an injury makes the worker incapable of obtaining employment in any well-known branch of the labor market. An odd-lot worker is thus totally disabled

if the only services the worker can perform are "so limited in quality, dependability, or quantity that a reasonably stable market for them does not exist." Id., at 105.

Under the odd-lot doctrine, the burden of persuasion on the issue of industrial disability always remains with the worker. Nevertheless, when a worker makes a prima facie case of total disability by producing substantial evidence that the worker is not employable in the competitive labor market, the burden to produce evidence showing availability of suitable employment shifts to the employer. If the employer fails to produce such evidence and the trier of facts finds the worker does fall in the odd-lot category, the worker is entitled to a finding of total disability. Guyton, 373 N.W.2d at 106.

The extent of an injured employee's industrial disability is based on consideration of the following factors: functional disability, age, education, qualifications, work experience, inability to engage in similar employment, earnings before and after the injury, motivation to work, personal characteristics, and the employer's inability to accommodate the injured employee's functional limitations. See Neal v. Annett Holdings, Inc., 814 N.W.2d 512, 526 (Iowa 2012); IBP, Inc. v. Al-Gharib, 604 N.W.2d 621, 632–33 (Iowa 2000); E.N.T. Assoc. v. Collentine, 525 N.W.2d 827, 830 (Iowa 1994); Ehlinger v. State, 237 N.W.2d 784, 792 (Iowa 1976). Even under the odd-lot doctrine, the trier of fact is free to determine the weight and credibility of evidence in determining whether the worker's burden of persuasion has been carried, and only in an exceptional case would evidence be sufficiently strong as to compel a finding of total disability as a matter of law. Guyton, 373 N.W.2d at 106.

The Iowa Supreme Court has quoted the Commissioner with approval for the principle that under the Iowa Workers' Compensation Act, "'[t]otal disability does not mean a state of absolute helplessness.'" Caselman, 657 N.W.2d at 501 (quoting Al-Gharib, 604 N.W.2d at 633). "Such disability occurs when the injury wholly disables the employee from performing work that the employee's experience, training, intelligence, and physical capacities would otherwise permit the employee to perform." Al-Gharib, 604 N.W.2d at 633 (citing Diederich v. Tri–City Ry., 219 Iowa 587, 593–94, 258 N.W. 899, 902 (1935)). A finding that claimant could perform some work despite claimant's physical and educational limitations does not foreclose a finding of permanent total disability. See Chamberlin v. Ralston Purina, File No. 661698 (App. October 1987); Eastman v. Westway Trading Corp., II Iowa Industrial Commissioner Report 134 (App. May 1982). "Simply put, the question is this: Are there jobs in the community that the employee can do for which the employee can realistically compete?" Second Injury Fund of Iowa v. Shank, 516 N.W.2d 808, 815 (Iowa 1994) (citing Guyton v. Irving Jensen Co., 373 N.W.2d 101, 103, 104 (Iowa 1985)).

Moreover:

> Another important factor in the consideration of permanent and total disability cases is the employer's ability to retain the injured worker with an offer of suitable work. The refusal or inability of the employer to return a claimant to work in any capacity is, by itself, significant evidence of a lack

> of employability. Clinton v. All-American Homes, File No. 5032603 (App. April 17, 2013); Western v. Putco Inc., File Nos. 5005190/5005191 (App. July 29, 2005); Pierson v. O'Bryan Brothers, File No. 951206 (App. Jan. 20, 1995); Meeks v. Firestone Tire & Rubber Co., File No. 876894 (App. Jan. 22, 1993); see also Larson, Workers' Compensation Law, Section 57.61, pps. 10-164.90-95; Sunbeam Corp. v. Bates, 271 Ark 385, 609 S.W.2d 102 (1980); Army & Air Force Exchange Service v. Neuman, 278 F.Supp. 865 (W.D. La 1967); Leonardo v. Uncas Manufacturing Co., 77 R.I. 245, 75 A.2d 188 (1950). An employer knows the demands that are placed on its workforce. Its determination that the worker is too disabled for it to employ is entitled to considerable weight. If the employer in whose employ the disability occurred is unwilling or unable to accommodate the disability, there is no reason to expect some other employer to have more incentive to do so.

McNitt v. Nordstrom, Inc., File No. 5065697 (Rehrg. July 20, 2020) (aff'd and adopted as final agency decision, App. Aug. 7, 2020).

Hastings was fifty years old at the time of hearing. He was right-hand dominant before the work injury. The injury to his right shoulder has caused significant physical limitations with his once-dominant arm and hand.

Hastings has a significant functional impairment rating from his physical injuries. He also has a permanent mental disability stemming from the work injury. He has significant permanent work restrictions due to his physical limitations following the work injury and resultant surgeries.

The evidence shows him to be a motivated worker, primarily in jobs with physical demands beyond what he is currently capable of performing. Hastings's permanent work restrictions prevent him from returning to his past jobs as a janitor, trimming trees, working construction, or as an employee of Orkin, as evidenced by Orkin never offering him employment after he was placed on restrictions following the work injury. As discussed above, Hastings's work at Orkin was a hybrid of service and sales. There is an insufficient basis in the record from which to conclude Hastings could obtain employment in a job that is strictly sales.

Further, Laughlin performed an employability assessment of Hastings in early 2021 that noted he is not skilled at using computers, he can no longer use his CDL as an over-the-road trucker, and his permanent work restrictions. She concluded he had sustained a 46.2 percent loss of generally transferrable occupations under Dr. Nepola's work restrictions and a 93.9 percent loss to all directly transferable occupations based on Dr. Sassman's work restrictions. Laughlin further opined Hastings would require a high level of accommodation and his physical limitations due to the will affect his ability to get hired. The defendants did not offer any vocational analysis in rebuttal to Laughlin's report.

For these reasons, Hastings has met his burden of proof on permanent total disability under the Iowa Workers' Compensation Act. The jobs he is physically capable of performing "so limited in quality, dependability, or quantity that a reasonably stable market for them does not exist." Guyton, 373 N.W.2d at 105. The evidence establishes the stipulated work injury prevents him from performing work that his experience, training, intelligence, and physical capacities would otherwise permit him to perform. Hastings has sustained permanent total disability from the work injury.

3. Rate.

The parties stipulated Hastings's gross earnings on the stipulated injury date were seven hundred fifty-six and 91/100 dollars ($756.91) per week. They also stipulated he was married and entitled to three exemptions at the time in question. Based on the parties' stipulations, Hastings's workers' compensation rate is five hundred four and 99/100 dollars ($504.99) per week.

4. Medical Expenses.

For all compensable injuries under Iowa Code chapter 85 or 85A, the employer must "furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies therefor and shall allow reasonably necessary transportation expenses incurred for such services." Iowa Code § 85.27(1). Here, the defendants until they denied liability and refused care. After they did so, Hastings got care on his own.

The defendants' denial of liability means they lost the right to choose the care for the work injury. Winnebago Indus., Inc. v. Haverly, 727 N.W.2d 567, 575 (Iowa 2006) (citing Trade Prof'ls, Inc. v. Shriver, 661 N.W.2d 119, 124 (Iowa 2003)). Hastings could therefore obtain reasonable care from any provider for the injury, at his expense, and seek reimbursement for such care through this contested case proceeding. See Trade Prof'ls, 661 N.W.2d at 121–25 (affirming on judicial review an agency decision ordering the payment of medical expenses for unauthorized care because the defendants denied liability for the alleged injury and therefore lost the right to control care). As found above, Hastings is entitled to reimbursement for the medical expenses in Claimant's Exhibit 15.

5. Mileage.

The employer must reimburse an employee who sustains a compensable injury under Iowa Code chapter 85 for the reasonable and necessary transportation costs incurred by the employee when obtaining care for the work injury. Iowa Code § 85.27(1). An employee is required to submit for examination for the employee's work-related injury "without cost to the employee." Iowa Code § 85.39(1). If an employee is required to leave work for which the employee is being paid wages to attend the requested examination, . . . the employee shall be furnished transportation to and from the place of examination, or the employer may elect to pay the employee the reasonable cost of the transportation." Id.

Transportation costs under Iowa Code sections 85.27 and 85.39 include, but are not limited to, all mileage incident to the use of a private auto. 876 IAC 8.1(2). "For annual periods beginning July 1, 2006, and thereafter, the per-mile rate shall be the rate allowed by the Internal Revenue Service for the business standard mileage rate in effect on July 1 of each year." Id. As found above, Hastings is entitled to reimbursement for the mileage as set forth in Claimant's Exhibit 12.

6. Penalty.

"Because penalty benefits are a creature of statute, our discussion begins with an examination of the statutory parameters for such benefits." Keystone Nursing Care Ctr. v. Craddock, 705 N.W.2d 299, 307 (Iowa 2005). Under Iowa Code section 86.13(4)(a)

> If a denial, a delay in payment, or a termination of benefits occurs without reasonable or probable cause or excuse known to the employer or insurance carrier at the time of the denial, delay in payment, or termination of benefits, the workers' compensation commissioner shall award benefits in addition to those benefits payable under this chapter, or chapter 85, 85A, or 85B, up to fifty percent of the amount of benefits that were denied, delayed, or terminated without reasonable or probable cause or excuse.

This provision "codifies, in the workers' compensation insurance context, the common law rule that insurers with good faith disputes over the legal or factual validity of claims can challenge them, if their arguments for doing so present fairly debatable issues." Covia v. Robinson, 507 N.W.2d 411, 412 (Iowa 1993) (citing Dirks v. Farm Bureau Mut. Ins. Co., 465 N.W.2d 857, 861 (Iowa 1991) and Dolan v. Aid Ins. Co., 431 N.W.2d 790, 794 (Iowa 1988)). "The purpose or goal of the statute is both punishment and deterrence." Robbennolt v. Snap-On Tools Corp., 555 N.W.2d 229, 237 (Iowa 1996).

The legislature established in Iowa Code section 86.13(4)(b) a burden-shifting framework for determining whether penalty benefits must be awarded in a workers' compensation case. See 2009 Iowa Acts ch. 179, § 110 (codified at Iowa Code § 86.13(4)(b)); see also Pettengill v. Am. Blue Ribbon Holdings, LLC, 875 N.W.2d 740, 746–47 (Iowa App. 2015) as amended (Feb. 16, 2016) (discussing the burden-shifting required by the two-factor statutory test). The employee bears the burden to establish a prima facie case for penalty benefits. See Iowa Code § 86.13(4)(b). To do so, the employee must demonstrate a denial, delay in payment, or termination of workers' compensation benefits. Iowa Code § 86.13(4)(b)(1). If the employee fails to prove a denial, delay, or termination, there can be no award of penalty benefits and the analysis stops. See id. at § 86.13(4)(b); see also Pettengill, 875 N.W.2d at 747. However, if the employee makes the requisite showing, the burden of proof shifts to the employer. See id. at § 86.13(4)(b); see also Pettengill, 875 N.W.2d at 747.

To avoid an award of penalty benefits, the employer must "prove a reasonable or probable cause or excuse for the denial, delay in payment, or termination of benefits." Iowa Code§ 86.13(4)(b)(2). An excuse must meet all of the following criteria to be "a reasonable or probable cause or excuse" under the statute:

> (1) The excuse was preceded by a reasonable investigation and evaluation by the employer or insurance carrier into whether benefits were owed to the employee.
>
> (2) The results of the reasonable investigation and evaluation were the actual basis upon which the employer or insurance carrier contemporaneously relied to deny, delay payment of, or terminate benefits.
>
> (3) The employer or insurance carrier contemporaneously conveyed the basis for the denial, delay in payment, or termination of benefits to the employee at the time of the denial, delay, or termination of benefits.

Id. § 86.13(4)(c).

> This paragraph creates a mandatory timeline for the employer to follow in showing it had a "reasonable or probable cause or excuse" for the termination of benefits. Iowa Code § 86.13(4)(c)(1)-(3). First, the employer's excuse for the termination must have been *preceded* by an investigation. *Id.* § 86.13(4)(c)(1). Second, the results of the investigation were "*the actual basis ... contemporaneously* " relied on by the employer in terminating the benefits. Third, the employer "*contemporaneously* conveyed the basis for the ... termination of benefits to the employee *at the time of the ... termination.*" *Id.* § 86.13(4)(c)(3)

Pettengill, 875 N.W.2d at 747 (emphasis in original). "An employer cannot unilaterally decide to terminate an employee's benefits without adhering to Iowa Code section 86.13; to allow otherwise would contradict the language of that section." Id.

"A 'reasonable basis' for denial of the claim exists if the claim is 'fairly debatable.'" Keystone Nursing Care Ctr., 705 N.W.2d at 307 (quoting Christensen v. Snap-On Tools Corp., 554 N.W.2d 254, 260 (Iowa 1996)). A claim may be fairly debatable because of a good faith legal or factual dispute. See Covia, 507 N.W.2d at 416 (finding a jurisdictional issue fairly debatable because there were "viable arguments in favor of either party"). "[T]he reasonableness of the employer's denial or termination of benefits does not turn on whether the employer was right. The issue is whether there was a reasonable basis for the employer's position that no benefits were owing." Keystone Nursing Care Ctr., 705 N.W.2d at 307–08.

The defendants denied Hastings's claim and ceased payment of benefits because of Dr. Broghammer's opinion on causation. The weight of the evidence shows this position was reasonable under the circumstances. Even after Dr. Nepola's opinion,

the question was fairly debatable. Therefore, Hastings has failed to prove entitlement to a penalty.

7. IME.

Under Iowa Code section 85.39, an injured employee is entitled to get an IME with a doctor of the employee's choice in response to an opinion on permanent disability issued by a doctor of the employer's choice with which the employee disagrees. Before September 1, 2021, the Commissioner recognized a distinction between a medical opinion on causation and one on the nature and extent of permanent disability when determining whether the cost of an IME may be reimbursed to the claimant under Iowa Code section 85.39. Barnhart v. John Deere Dubuque Works of Deere & Company, File No. 5065851, p. 2 (App. Mar. 27, 2020) (citing Reh v. Tyson Foods, Inc., File No. 5053428 (App. Mar. 26, 2018)). Under this agency precedent, an injured employee could only obtain reimbursement for an IME in response to an opinion on permanent impairment by an employer-chosen doctor. Id. No reimbursement was available if the employer-chosen doctor opined only on causation. Id.

On September 1, 2021, the Iowa Court of Appeals issued its opinion in Kern v. Fenchel, Doster & Buck, P.L.C., No. 20-1206 (Iowa App. Sep. 1, 2021). The court reversed an agency decision denying IME reimbursement because the employer-chosen doctor had opined only on causation and had not addressed what, if any, disability the claimant had sustained. Id. In doing so, the court determined the agency had erroneously interpreted Iowa Code section 85.39 and Iowa Supreme Court precedent construing it. Id. The court concluded that an employer-chosen doctor's opinion finding that a workers' alleged injury or condition did not arise out of and in the course of the workers' employment constitutes an opinion of no disability and the cost of an IME sought due to disagreement with such an opinion is reimbursable under section 85.39. Id.

In this case, Dr. Broghammer issued an opinion on causation. He then affirmed this opinion multiple times. It is effectively an opinion of no permanent disability stemming from the work injury. Therefore, Hastings is entitled to reimbursement for the full cost of Dr. Sassman's IME, which equals six thousand six hundred dollars ($6,600.00).

8. Costs.

Iowa Code section 86.40 gives the agency the discretion to tax costs. "Fee-shifting statutes using 'all costs' language have been construed 'to limit reimbursement for litigation expenses to those allowed as taxable court costs.'" Des Moines Area Reg'l Transit Auth. v. Young, 867 N.W.2d 839, 846 (Iowa 2015) (quoting Riverdale v. Diercks, 806 N.W.2d 643, 660 (Iowa 2011)). Statutes and administrative rules providing for recovery of costs are strictly construed. Id. (quoting Hughes v. Burlington N. R.R., 545 N.W.2d 318, 321 (Iowa 1996)).

Rule 876 IAC 4.33 allows taxation of the following costs:

- Attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, 876 IAC 4.33(1);
- Transcription costs when appropriate, 876 IAC 4.33(2);
- Costs of service of the original notice and subpoenas, 876 IAC 4.33(3);
- Witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, 876 IAC 4.33(4);
- Costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, 876 IAC 4.33(5);
- Reasonable costs of obtaining no more than two doctors' or practitioners' reports, 876 IAC 4.33(6);
- Filing fees when appropriate, including convenience fees incurred by using the payment gateway on the Workers' Compensation Electronic System (WCES), 876 IAC 4.33(7); and
- Costs of persons reviewing health service disputes, 876 IAC 4.33(8).

The assessment of costs includes "the reasonable costs of obtaining no more than two doctors' or practitioners' reports." 876 IAC 4.33.

> A "report" is a "formal oral or written presentation of facts or a recommendation for action." Black's Law Dictionary 1492 (10th ed.2014). The word "obtain" is used as a modifier in the rule and means "[t]o bring into one's own possession; to procure, esp[ecially] through effort." Id. at 1247. Thus, the concept of obtaining a report for a hearing is separate from the concept of a physical examination. A "physical examination" is "[a]n examination of a person's body by a medical professional to determine whether the person is healthy, ill, or disabled." Id. at 680. The concept of "obtaining" a report is separate from the process of "obtaining" an examination. Our legislature recognized as much by separately authorizing the commissioner to appoint "a duly qualified, impartial physician to examine the injured employee and make report." Iowa Code § 86.38. A medical report for purposes of a hearing is aligned with a prehearing medical deposition. In the context of the assessment of costs, the expenses of the underlying medical treatment and examination are not part of the costs of the report or deposition.

Young, 867 N.W.2d at 845–46. The Commissioner has ruled "the court's rationale equally applicable to the expenses incurred by vocational experts." Simmer v. Menard, Inc., File No. 5041139 (App. Apr. 29, 2020) (citing Kirkendall v. Cargill Meat Solutions

Corp., File No. 5055494 (App. Dec. 17, 2009) and Voshell v. Compass Group, USA, Inc., File No. 5056857 (App. Sep. 27, 2019))

Under Rule 876 IAC 4.33 allows taxation as a cost "the reasonable costs of obtaining no more than two doctors' or practitioners' reports." As an administrative rule that provides for recovery of costs, it is strictly construed. Young, 867 N.W.2d at 846 (quoting Hughes v. Burlington N. R.R., 545 N.W.2d 318, 321 (Iowa 1996)). The "no more than two" language limits taxation of costs to two or less reports. Simmer v. Menard, Inc., File No. 5041139 (App. Apr. 29, 2020) Consequently, only the cost of Dr. Mittauer's report ($1,350.00) and Barbara Laughlin's vocational report ($1,240.00) are taxed against the defendants.

The one hundred eighty-two and 60/100 dollars ($182.60) for the hearing transcript is also taxed against the defendants under rule 876 IAC 4.33(2). However, the cost of the SSA file relating to Hastings's claim for disability benefits is not taxed because an agency rule does not expressly allow it.

ORDER

Based on the above findings of fact and conclusions of law, it is ordered:

1) The defendants shall pay to Hastings fifty-seven point five seven (57.57) weeks of healing period benefits at the rate of five hundred four and 99/100 dollars ($504.99) per week.

2) The defendants shall pay to Hastings permanent total disability benefits at the rate of five hundred four and 99/100 dollars ($504.99) per week from the commencement date of August 31, 2019.

3) The defendants shall pay accrued weekly benefits in a lump sum.

4) The defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.

5) The defendants are to be given the credit for benefits previously paid for the stipulated amount.

6) The defendants shall file subsequent reports of injury as required by Rule 876 IAC 3.1(2).

7) The defendants shall reimburse Hastings for the medical expenses in Claimant's Exhibit 15.

8) The defendants shall reimburse Hastings for the mileage in Claimant's Exhibit 12.

9) The defendants shall reimburse Hastings six thousand six hundred dollars ($6,600.00) for Dr. Sassman's IME.

10) The defendants shall pay to Hastings the following amounts for the following costs:

a) One hundred dollars and 00/100 ($100.00) for the filing fee;

b) One thousand three hundred fifty dollars ($1,350.00) for the cost of the expert report by Dr. Mittauer;

c) One thousand two hundred forty dollars ($1,240.00) for the cost of the vocational report by Barbara Laughlin; and

d) One hundred eighty-two and 60/100 dollars ($182.60) for the cost of the arbitration hearing transcript.

11) The defendants shall hold Hastings harmless for reasonable care relating to his work injury, including but not limited to follow-up care with Dr. Nepola for his right total shoulder replacement, and ongoing mental health care with Dr. Mittauer, and Corfman.

Signed and filed this 15th day of July, 2022.

BEN HUMPHREY
Deputy Workers' Compensation Commissioner

The parties have been served, as follows:

Mark J. Sullivan (via WCES)

Tiernan T. Siems (via WCES)

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or legal holiday.